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ADDRESS

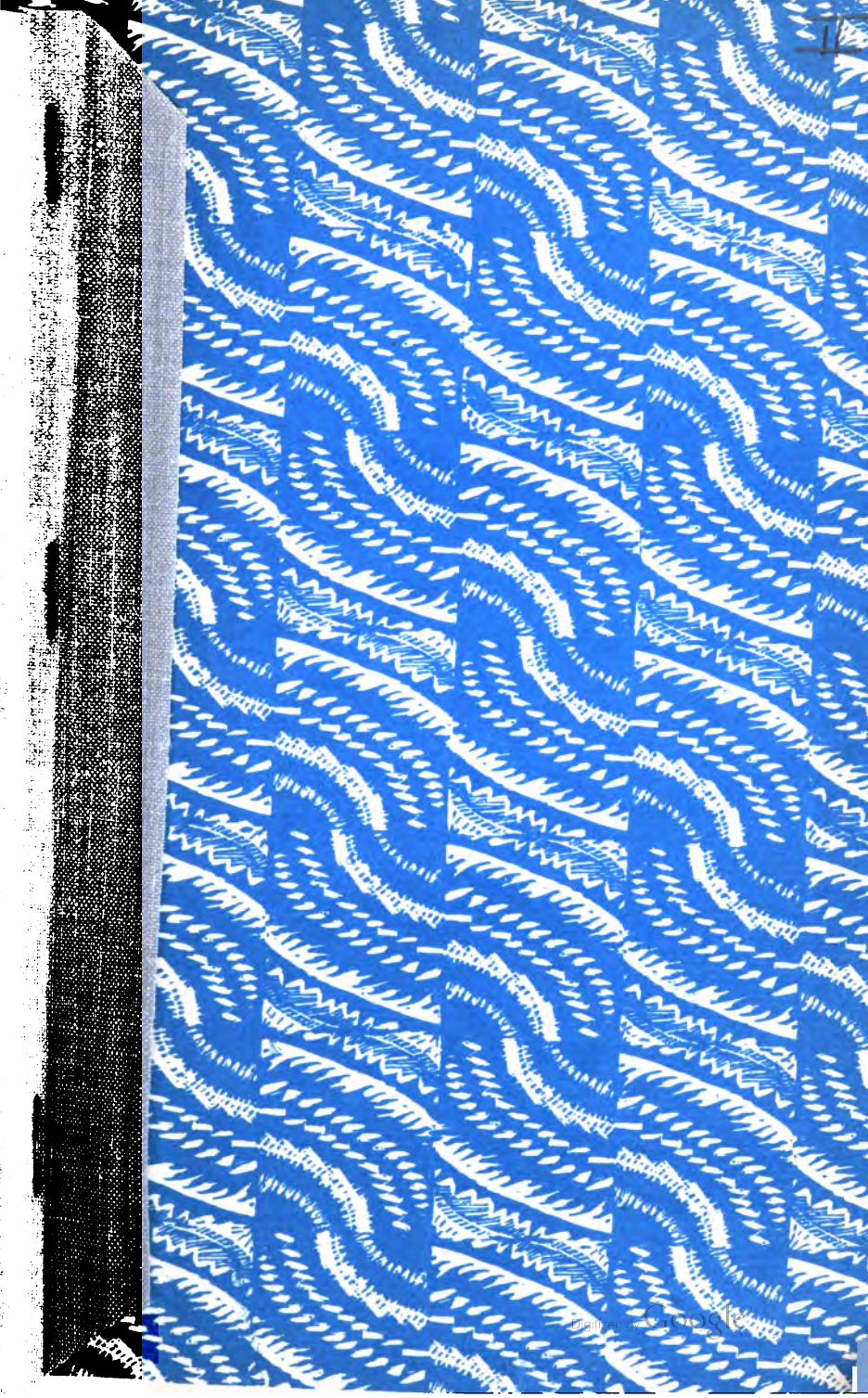
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Legal and Historical Society.

AN ADDRESS

DELIVERED BY

THE PRESIDENT

RICHARD P. CARTON, ESQ:

BARRISTER-AT-LAW

AT THE OPENING MEETING OF THE SESSION, 1867-8,

NOVEMBER 18TH, 1867

"There is an eloquence that aims at talk,
A Muse though winged that prefers to walk."—*St. Stephens.*

DUBLIN:

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ROBERT T. WHITE, STEAM-PRESS PRINTER,
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1867,

TO THE MEMBERS

OF THE

LEGAL AND HISTORICAL SOCIETY.

This Address is Dedicated

BY

THEIR SINCERE FRIEND

THE AUTHOR.

December, 1867.

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EXTRACT FROM THE MINUTES
OF THE
LEGAL AND HISTORICAL SOCIETY.

THE Society held the Opening Meeting of the Session 1867-68, on the evening of Monday, the 18th of November, 1867, at the Society's Rooms, 212 Great Brunswick-street.

The Chair was taken at Eight o'clock by

The President, RICHARD P. CARTON, Esq.

who then delivered the Inaugural Address.

GEORGE ORME MALLEY, Esq. then moved "That the President's Address be printed and circulated at the expense of the Society."

LESLIE S. MONTGOMERY, Esq. seconded the motion, which was carried unanimously.

The Society then adjourned.

ADDRESS.

GENTLEMEN OF THE LEGAL AND HISTORICAL SOCIETY,

My first words from the chair to which your kindness has elected me, shall be words of thanks. I wish you to believe in this I am not merely following the example of my predecessors. I assure you I am deeply grateful to you all for the honour you have conferred upon me. The place I fill to-night has been, in past years, given to those who have from time to time best furthered the interests of your Society by generous help and active zeal. I cannot flatter myself that I sit here in right of any such conduct on my part. I am conscious of my shortcomings as a member, and of the small part I have taken in the Debates of bye-gone Sessions. But I think I can say this—that I bring to the office of your President a sincere and heartfelt interest in the honour and well-being of your Society, and an honest desire to uphold its good name, and to extend its usefulness by every means in my power.

Gentlemen, I deeply regret that I cannot here

adopt the language of my immediate predecessor, and describe, as he did, "the position of the Society as satisfactory, and its prospects as hopeful." As well as I can gather from our annals, the Session through which we have just passed has been the most unsatisfactory they have yet recorded. Mr. Houston told you, in words I have no doubt you all remember, of the necessity for listeners, but unfortunately during the greater part of last year we have too often felt the still greater necessity for speakers. For a considerable period during the Session, from the 28th of January to the 13th of May—in other words, during the most favourable portion of the Legal year—the business of the Society was entirely suspended. In the whole Session there were only ten Meetings and but seven Debates; and four of these were on general, as distinguished from purely Legal subjects. The average attendance was five; and only two new members joined the Society. These figures force me to make the sorrowful confession which was made fifteen years ago by Mr. Montgomery, "that there is "exhibited amongst some of our members a greater "listlessness, apathy, and apparent indifference, than "is consistent with our permanent welfare as a "body." *

This is not a hopeful or a pleasant picture; but I would not be doing my duty if I did not draw it for you, and ask your attention to its details. Gentlemen, we must not shut our eyes to the fact that our Society is not in a healthy state. I believe, myself, that this

⌚ Address at the Opening Meeting of the Session, 1852-3, p. 9.

state is not due to any inherent weakness, but has been induced, for the most part, by accidental circumstances. It will be for us, however, to take care lest this state should be the forerunner of decay and dissolution, and not a merely temporary disorganization ; and we should now seriously take counsel together, and adopt measures for watching over our Society during a time which I have reason to fear will be a crisis in its history.

From time to time you have been accustomed to hear at our Opening Meetings, a luminous and thoughtful essay on some subject of Legal Reform, or else some well considered and suggestive words of advice on the studies required to fit the Barrister for his profession. The importance of supplementing the study of formal law by some knowledge of the principles of Jurisprudence—the manifold uses of History and Literature—the Codification of English Law—the Reporting System—the relations of Landlord and Tenant, and the fusion of Law and Equity, have been all brought under your notice. And so when I was appointed your President I was not without the ambition of adding something, however unworthy, to the stores of careful research—of patient thought—of far-seeing speculation—of generous sentiment, and of lofty hopes, which the Addresses of your Presidents contain. But when I considered that state in our affairs, of which I have just spoken, it occurred to me that I would do better to take somewhat lower ground ; and so I put aside—and I confess I did so with reluctance—the attempt to imitate what I could not

hope to excel ; and I will ask you to-night to consider the past history and present position of the Legal and Historical Society, the part it was intended to play in the education of the Irish Barrister, and the changes which altered circumstances and new modes of thought may have rendered necessary, if we would keep its existence free from peril, or its usefulness unimpaired.

The Society has now been in existence for upwards of 19 years. During that time it has been silently and unostentatiously doing the work for which its founders intended it. It has often been obliged to change its dwelling place. It has had its years of struggle—of success—and of failure. The chances of promotion have come to some of its Members, and taken them away to careers of honour and usefulness in distant lands. The longing for wider and perhaps richer fields of action has done the same with others. Death, too, has been in its midst ; and although his visits have been happily but few, it has to mourn the loss of two of its oldest members, who filled, with credit to themselves and to its great advantage, the chair I occupy to-night.* But we are happy to know that with all the changes which even so short a period as twenty years must bring along with it, the greater number of those who were the founders of the Society, and who have since been its chief supporters, are still amongst us. They are known to you all—but there is one of them to whom, in an especial manner, the Society is indebted. One who toiled long and actively in its ranks, and

* Mr. R. W. Osborne and Mr. Arthur Clere.

who continued to take the warmest interest in its welfare, when the rapid increase of business took him away from its meetings. One whom no promotion could estrange, and no other calls upon his time and thoughts make forgetful. One ever ready to lend his aid, whether with wise advice, in kindly intercourse, or by generous co-operation. To you I need not say more ; but any sketch of the past history of the Society would indeed be incomplete if it did not tell how much was due to Edward Sullivan.

And if I wanted proofs of past success, and of good work accomplished, I would call these old members as my witnesses. They are doing the work of our profession at the present moment. All but the very highest prizes have been won by some of them. The lower rungs of the ladder of professional promotion have been mounted by more ; and though for the most part they still wear the stuff of the junior, they are—some slowly, but all surely—winning their way to an honourable, a lucrative, and an increasing practice. Ask them, one and all, and they will tell you that in this Society, in the preparation of its questions, in the discussion of these questions afterwards, in the habits of thought and expression, which such exercises developed, and in the stores of legal knowledge, which they thus accumulated almost unconsciously, they found the easiest and the most fitting preparation for the profession of their choice.

I need scarcely remind you that our Society has a two-fold object. It aims at enabling its Members to acquire a prompt, correct, and fluent speech ; and

at the same time strives to familiarize them with legal principles and professional modes of thought. I think I may lay it down as a very certain fact, that this faculty of promptly clothing thoughts, with fitting words, is not a natural gift—that the Orator is made, and not born. Of course the faculty will be more easily acquired by some than by others. As with all other accomplishments of mind and body, natural aptitude will facilitate art. And yet in practice we ignore the fact which we will so readily admit in theory. We see, every day, many of those who are coming to the profession—many of those who are as yet members of it only in name—and many of those who are getting into practice, act as though they believed that easy and eloquent speech were a thing of inspiration. They seem, by their conduct, to think that it requires no study, or discipline, or preparation, beforehand. They either despise or dread the *infinitus labor et quotidiana meditatio* of which Tacitus speaks.* We see the results of this in the careless and slipshod speech which has become so rife in our Courts. We see them in the wearisome iteration—in the unfinished sentences—in the tripping grammar, and in the daring confusion of metaphor which enter so largely into the addresses of even the most popular of our advocates. Believe me, gentlemen, the power of speaking fluent and grammatical English is not to be learned in a day. The ability to call up at will the words which will most clearly and fitly disclose the chain of reasoning which is being forged in

* *De Oratoribus Dialogus*, cap. xxx.

the speaker's brain, or the flight of fancy which has just passed across it, does not come to us by nature. But early and patient training can give us both ; and in eloquence, as in every other art, it is practice alone that can make us perfect. You have all, some time or other, stood entranced before some great monument of the sculptor's art, and you were conscious only of the inspirations of genius, as you gazed upon the majestic strength or the lines of rounded loveliness that seemed to make the lifeless marble rival the Almighty's work. And yet there must have been a time when the chisel had felt dull and heavy in the artist's hand, and when his clumsy fingers and uncertain stroke were powerless to carry out the bright conceptions that thronged his brain. You have, at other times, stood by as eager listeners, while some accomplished musician displayed his skill, and you have marvelled at the strains of harmony he could evoke by the lightest touch. And yet there must have been a time when his fingers wandered helplessly over the keys, and his senses were bewildered by the symbols set before him, and by the jarring discord of the only sounds he made. And so has it ever been with each great master of the music of human speech. You feel the maturity of his power in the flowing periods and the passionate rhetoric which take your imagination captive, and carry away your feelings by storm. But, be assured, there was a time when the words would not come to his call, and when his faltering voice could only stammer out a few confused and broken sentences. The patient discipline of Demosthenes is familiar to

every school-boy. You may read in Mr. Forsyth's pleasant work of the years of laborious and varied study through which Cicero toiled to his perfection :

“ Dear Curran's airy thoughts, like purple birds,
That shine and soar,”

were dull and wingless enough on that night of his first essay at the Devils' in Temple-lane. The interesting volumes recently given to the world, by our brother, Mr. Plunket, are full of evidences and illustrations of the careful industry and accurate preparation by which his famous ancestor gained his skill and renown. I might multiply instances if it were necessary. I give those which immediately occur to me, and I know that the reading of each of you could supply many more. And the paths which these men, with their gifts of genius, and their wealth of intellect, did not disdain to tread, must be trodden by all who would reach ever so humble a place of excellence in this glorious art of theirs. Civilization, amidst all its marvels, has failed as yet to lay down any royal road to eloquence. But it is sometimes said that this latter day civilization has done more—that it has rendered eloquence an obsolete art, which it is waste of time to acquire. We are often told that other modes of communicating thought have robbed it of its opportunities, and taken from it its power. It will be, perhaps, worth our while to examine for a moment what amount of truth there may be in all this. There is no doubt that the Orator does not play the important part in the social life around us which he did in former times. The diffusion of books and the wide

spread of a daily and powerful Press, have curtailed his sphere of action. The gradual levelling of intellectual differences, which accompanies extended education, has cut down the vantage ground on which, of old, he was accustomed to stand. The orator who thundered from an Athenian bema, or who stilled, with the magic of his voice, the crowds that surged in a Roman Forum, was almost always the intellectual superior of the audiences he addressed. By force of this very superiority his utterances commanded respect. In the two great Republics of the ancient world all who looked for high office should be practised speakers; and even the successful soldier had to cultivate oratory if he would have a chance of civic honours. We have changed all this now. The newspaper and the book have silenced the voice in the market place. The world has learned to put a higher value on deeds than words, and will bestow its honours without caring to ask, that those who have earned them should be able to sue for them with volubility, or to acknowledge them with grace. And yet it cannot be said that the career of the popular orator is wholly ended, or that he has lost all his power, when his voice can make itself heard. The history of the past two years would contradict me if I made any such statement, and bid me see how often

“The hearts of many fired the lips of one,”

as John Bright addressed the working-men of England.

But as I said before the Orator's scope of action has been curtailed, and his opportunities lessened. Par-

liament, as a field for the legitimate exercise of oratory, as the art of persuading, is being rapidly closed up. The art can have little room to show its power when a convertible auditory is wanting. The speeches of a Derby, or a Lowe, or a Gladstone, may, from time to time, remind us that the faculty is still there ; but so long as it is to be exerted upon men who have already made up their minds, and who will deliberately close their ears to its influence, we may expect every day to see it more seldom put to use. So, too, the very fashion of all speech has greatly changed. The exclamations and tropes which occur so often in the ancient models, and which produced the mightiest effect on the sensitive populace of Athens or Rome, would be powerless now. We are told by Livy,* that when Scipio Africanus was accused of peculation he shook off the charge with the indignant burst—"This day year I won the battle of Zama, therefore, why debate." A defaulting minister in our days could hardly shelter himself by such a rhetorical artifice, even if he were bold enough to adopt it. The daring apostrophe—the brilliant metaphor—the solemn adjuration, have almost disappeared. They would be received with coldness if not with ridicule, by most modern audiences. The hurry of modern affairs gives little time even for speaking ; and the vastness of the details which the speaker must treat of, in the time at his disposal, prevents him from adorning them with any flowers of oratory ; and so the prevalent style of public speaking

* Lib. xxxviii., cap. li.

is terse, clear, simple, and business-like—going straight to its object, and seldom loitering by the way.

“There is an eloquence that aims at talk—
A Muse, though winged, that prefers to walk.”

But it is still eloquence—and for all this change in its outward form it has not ceased to be an art. Difficult to be acquired, and yielding only to the old means ; instinct with all the old fire, but taught to economize and to conceal it.

Gentlemen, it would be strange if the changes of taste and fashion in Eloquence were without their effect on the Eloquence of our own profession. I need not remind you of the intimate relations which have ever existed between advocacy and the art of speaking. From the days when cunning Rhetoricians composed the speeches, whose fluent phrases and often specious arguments were used to win a favorable judgment from the Athenian Dicasts, down to the days when the Nisi Prius leaders, with whom we are familiar, strive to extort a verdict from a modern jury, the “masters of the art of tongue fence” have found honour and profit in the court of justice. I need not expatiate on the wide field of labour which the practice of our profession opens for the exercise of the orator’s art. Human nature in its varying phases—in its strength, and in its weakness—in its cold selfishness, and in its boundless love, gives the topics with which he there has to deal. He may sound from the highest to the lowest, every chord of human feeling. He may play with the fancies which hover on the surface of

his hearers' minds, or he may reach down to the thoughts in their hearts, which lie too deep for tears. And the very object and circumstances of his speech give him his strength and power. He speaks not for mere empty admiration, but to gain his cause. Before him is a convertible audience, in whose listening faces he may read the effect of every word he utters. And the proud consciousness that he is swaying the judgments, or domineering over the wills of the men he addresses, guides him in his path, while it incites him to nobler efforts. But I do not mean to speak so much of the measure of the advocate's art, nor of the keen, intellectual pleasure which its exercise brings along with it. I mean rather to direct your attention to the changes in that art, and the particular fashion of it which we should strive to acquire. While laws were few and vaguely expressed; when judges, such as the Roman Prætors, exercised an undefined equitable jurisdiction in the application of which they were not bound by the regulations of their predecessors; or when, as in the Comitia, the Tribunes were possessed of a direct legislative power, the questions which came before them were not to be decided by argument alone. The individual passions, prejudices, and interests of the judges were let loose. Then the perilous art of the orator was called forth to direct these warring elements as best might suit his purpose; sometimes, to sweep away falsehood and oppression, and sometimes to bear down the barriers of truth, and law, and justice. And so we find in such specimens of the forensic oratory of

ancient days which have come down to us, little or no appeal to precedents, and little or no attempt to refer the case in hand to established legal principles. We find them made up of skilful narration of facts and acute reasoning upon them, with abundance of passionate appeal and fervid declamation. In the oration for Muræna, Cicero has left us a statement of his opinion of the superiority of eloquence over case law, for the advocates of his time ;* and I think we may give Cicero credit for knowing what was best suited for the atmosphere of a Roman Court.

Of forensic eloquence in the middle ages we have little record. Indeed I think I may say that until the period of the French Revolution none of the continental nations had any practical experience of popular eloquence at all. I should make one grand exception, however, in favour of the highest form of all human eloquence—that of the pulpit ; but of deliberative eloquence they had none, the democratic eloquence of the hustings was unknown, and forensic eloquence, if it existed at all, was not made public. We may judge of the style of speaking in the mediæval Courts, from the instructions given to advocates in the *Speculum Juris* of Guillaume Durand. Durand was a native of Provence ; he flourished in the middle of the 13th century, and died about the year 1296. You will find copious extracts from his work in the Preface to one of the volumes of the New Edition of the Year Books, from which I need hardly say my acquaintance with

* *Oratio pro L. Muræna*, vi., vii.

him is derived. He does not seem to lay any stress on the power of eloquence, properly so called, nor does he much admire its use. He especially counsels the advocate to avoid a superfluity of words, and not to imitate the example of some of his contemporaries, who thought that plenty of words atoned for want of sense, and gave a good return for the fee. His precepts are based on a knowledge of human nature, and he evidently prefers the course which leads—sometimes not quite honestly—to victory. He seems to think that more could be gained by studying the temper and mental qualities of the Judge, and of the opposite Counsel, and by skilfully dealing with both, than by any exercise of mere oratorical skill. It is strange how, after a lapse of nearly 600 years, the precepts of this wily lawyer can still be followed with advantage ; and how often we unconsciously adopt the arts which he has recommended. And if we should think that Durand's view of our Profession was a low one, and if we should be disposed to think hardly of him for putting it forward so broadly, let us remember, to his credit, he left behind him these two golden rules ; always to insist on a consultation, and in every serious case to have a second Counsel.

The author of *Hortensius* is forced to admit that eloquence has always been rare among the Advocates of England. In addition to its rarity it was a plant of slow growth. It was almost unknown until the latter part of the 18th century. If it had existed before that period it would have left some traces at least in the records of the State Trials. But though

these volumes contain abundant evidence of great learning and research, of wonderful familiarity with precedent, and sound and logical argument, we search through them in vain for any lofty or sustained flight of oratory. On the contrary, we find even the excellences of which I have spoken, too often disfigured by quotations generally inappropriate, by puerile conceits, and by laboured truisms, couched in stiff and formal language. While Shakspeare, and Milton, and Dryden, were showing the grace and strength, and nervous force, of which our language was capable ; while the world was being enriched with the prose of Bacon and Milton, of Raleigh, and Sir Thomas Browne ; while the English Church could boast of having her doctrines preached by a Hall, a Barrow, a Jeremy Taylor, and a Burnet,* it seems strange that the greatest English advocates could do nothing better than the wretched speeches which are preserved in the volumes I have referred to. Take one notable example out of many. If ever in the history of our Profession in these countries, there was an opportunity given for a display of all the best qualities of eloquence, it was given to the men who defended the Seven Bishops. They were the leaders of the bar in their day ; Sir Robert Sawyer, and Pemberton, and Finch, and Levinz, and Pollexfen, and Somers. With the single exception of the speech

* The effect of Burnet's preaching is thus described by Lord Macaulay—
 "He was often interrupted by the deep hum of his audience ; and when after preaching out the hour-glass, which in these days was part of the furniture of the pulpit, he held it up in his hand, the congregation clamorously encouraged him to go on till the sand had run off once more."—*History of England*, vol. 2, chapter 7.

of Somers, which is very brief,* but is marked by much terseness and vigour, the speeches are dry and technical, and utterly unworthy of the occasion, and of the great principles these men defended in the persons of their illustrious Clients. From the 18th century to our days, the Bar of England has undoubtedly produced some of the finest specimens of forensic eloquence which the world has ever heard. But the gift is a rare one among its members, and the cultivation of the gift is rarer still. Erskine, and Romilly, and Brougham, and Follett, are the bright exceptions which prove the rule, that a cold, correct, unimpassioned, and technical style, is most affected by the English Barrister, and is the one surest to lead him to success in his Profession. Various reasons have been given for the adoption of this style. Some have attributed it to the excessive technicalities which pervade every branch of English Law ; others have pretended to find its explanation in the cold and hard-headed character of the English people. But it seems to me that professional peculiarities are more to be referred to the circumstances of the profession than to the national character of these who exercise it. And so I would be inclined to refer the English style to the same cause I mentioned some time ago, as injurious to Parliamentary eloquence—namely, the vast amount, and complexity of the business, which comes before the English Courts, and the little time which can be allotted to each particular case. All redundancy of speech must

* He spoke little more than five minutes, but every word was full of weighty matter.—*Lord Macaulay's History of England, vol. 2, chap. 8,*

be avoided, and brevity and despatch are indispensable qualifications to the Barrister in large practice.

I need not speak to you of the eloquence of the Irish Bar. You are all familiar with the names of the great men who have not alone ennobled our profession, but have made our country famous by the splendour of their genius, and the glory of their bloodless triumphs. Their names are indeed household words amongst us. We have all our favourite speeches and our pet passages. We get them by heart. We treasure them in our memories. We put them before us as our models. The reverence and admiration conceived for them in boyhood, are strengthened and confirmed by the judgment of our riper years. The character of this eloquence has often been described by critics. Its beauties and its faults have been often exaggerated. Its merits are its power over the pathetic and the humorous—its absolute mastery over the heart—its variety of imagery—its flights of fancy—its touches of tenderness—its impassioned declamation—the lofty sentiments it enunciates, and the visions of philosophy, and the glimpses of great theory it occasionally reveals. Its faults are its redundancy both of words and figures—its discursiveness—its occasional extravagance—its appeal to the passions, rather than the reason, and its constant effort to be pathetic or magnificent on every subject of which it treats. The greatest master of this school of Orators was undoubtedly, Curran. In his Life, by his son, the qualities which I have endeavoured to sketch are ascribed to differences in national character and tem-

perament ; to the unsubdued and unrectified prevalence of all that is characteristic of the country, in the classes out of which juries are generally selected ; and to the influence exerted on the Irish Bar by the Irish House of Commons.* No doubt these several causes were not without their effect, but I think we should not overlook the character of the business in our Irish Courts. This has never been so great as in England. The deficiency of manufacturing industry, and the comparative stagnation of Irish trade, caused an almost total absence of commercial cases. Patent cases—contracts of affreightment and insurance—conflicting rights of air, and light, and water, seldom come before the Irish judges. The class of cases they dealt with was of a much simpler nature. Actions on Bills of Exchange or Bonds, suits for the renewal of Leases or the foreclosure of mortgages, and ejectments for non-payment of rent were frequent enough. But complaints of injuries to the property or the person were the most frequent of all. Cases common enough when ranged within the narrow limits of a lawyer's definition, but infinitely varied in the shapes of human sorrow and suffering they revealed. The pleader would know them only as actions of tort. But the half employed artisans and frieze-coated peasants, who filled the Courts where they were tried, would hang with hushed breath and beating hearts as the popular Counsellor descanted upon some tale of outraged virtue or cruel oppression, and would see in their details only new proofs of the down-trodden condition of their race.

Here were opportunities for pathos, for humour, for play upon feelings, and we know how they were used. But such cases required little legal argument, little knowledge of the minute technicalities of law, and not much evidence, and so there was the more time for the exercise of the orator's art. The school of Oratory of which I have been speaking long found disciples at the Irish Bar, and its influence is still perceptible. But the style it cultivated has gone out of fashion. The time when, in Shiel's words, "the Irish Counsellor was winged to Heaven by a bill of exchange, and drew tears from the jury in an ejectment for non-payment of rent," has passed away for ever. I wish I could say that the causes to which I have ventured to attribute the adoption of this style had passed away also. But the trade and manufactures of Ireland are still in the future; patent and commercial cases are nearly as few as of old; and still the actions of tort mainly furnish forth the lists to be disposed of at our after-sittings.

There are two styles of speaking required at the Irish Bar, and the Barrister who would achieve success must be a proficient in both. He must be able to make an effective speech to a jury, and to address an argument to the Court, whether it be a Court of Common Law or of Chancery. He cannot, at least until a very advanced period of his career, confine himself to one Court, or to one class of business. He must be prepared to leave the cross-examination of a witness in the Queen's Bench, to argue some point on the construction of a will before the Chancellor—

thence to be called away to the Exchequer to sum up the evidence in a case which he has only partially heard—and then to finish the argument of a demurrer which had been opened in his absence, by his junior, before the Common Pleas sitting in banc. While the want of division of labour obtains at our Bar, we cannot afford to neglect either, what I call for want of better names, the Jury style or the Court style. The first necessity for a Nisi Prius speaker is a copious vocabulary. He should have such a command over his language that the most appropriate phrase will rise to his lips at his bidding. He must be able as he goes along to compel his thoughts to form themselves grammatically and connectedly into words. If his attention is diverted from the substance to the manner in which it is to be expressed, the result will be alike confusion of ideas and language. He must be able quickly to take up facts, quickly to see their bearing one upon another, and their special bearing on his case. He must be able to deal with them skilfully ; to bring forward the facts of his own side prominently, make them seen under every aspect, and so group them together that they will be his best argument. He must, at the same time, know how to gloss over, or keep back, or put in disadvantageous lights, the facts of his adversary. He will be more likely to win a verdict from the judgment than from the passions ; and so the power to throw off succinct and vigorous argument must be his too. But he should avoid display of mere dialectic skill, and any profusion, and all subtilty of reasoning. He should rather select a few

broad points, and put them forcibly. To do this he must go over his facts till he sees they are mastered, and repeat his reasoning till he feels that the argument has gone home. But he must do this without his audience feeling it. He must make new combinations and ever changing forms of words disguise the repetition of the old ideas, as the optician makes the same bits of coloured glass assume a hundred shapes in the kaleidoscope. Through all he must never forget the legal aspect of his case ; but having once grasped the principle which it involves, or within which he seeks to bring it, he must always bear that principle in mind, and make all his facts and arguments group themselves round it. I have spoken only of what seem to me to be essential qualifications of the Nisi Prius advocate of our days. They are qualifications, every one of them artificial, and all to be acquired by practice. They are, for the most part, independent of natural gifts—at least of the higher gifts which we commonly associate with eloquence—and will lead to success without them. I do not mean to underrate the value of these natural gifts, or to say that those who are their fortunate possessors have not reason to be deeply grateful. But for the every day work of our profession now, what I have called the artificial, as distinguished from the natural qualifications, are the most serviceable and the most important. Without them success in our day is simply impossible ; with them it may be hoped for by all. “The eloquence that aims at talk,” is the eloquence that will most often be needed. Even the gifted few

must accommodate themselves to the prevailing fashion. They may lighten their speeches with their humour, or irradiate the dull details of their cases with the flight of imagination or the flash of fancy. But they must do so sparingly, if they would not often sacrifice the interests of their clients to their own self-glory. To borrow the image of Lord Brougham, the ornaments they use should be the sparks thrown off by the motion of the engine, and not fireworks to amuse by their singularity, or please by their beauty.* Of course opportunities will arise in the career of every successful advocate when all the higher qualities of eloquence may be fitly put forth. But they can come but seldom—perhaps once or twice in a lifetime. Then only can the lips which God has touched with his own fire sound the words befitting such an occasion. Whatever be the subject—whether it be misplaced confidence or broken trust—the rights of conscience violated, or the freedom of individual action broken down, or the old story of woman's weakness and of man's sin,—the Orator by nature can alone call down, and bid play around it—

“ The gleam,
The light that never was on sea or land—
The consecration and the poet's dream.”

And when such occasions do arise, the Orator's art, at least in an Irish Court of Justice, has lost none of its old power. If you doubt, I need but remind you of the great argument for the petitioner in *Hancock v. Delacour*, or of the noble defence of the traverser in

* Preface to *Life and Letters of Lord Plunket*.

the *Queen v. Conway*. I need only bid you call to mind the eager crowds that thronged the Court of Common Pleas, and the sensations of your own hearts as you listened to the reply in the *Yelverton* case ; or ask you to remember the day even later still, when almost the entire Bar filled the same Court to overflowing, to hear the speech for the plaintiff in *Travers v. Wilde*.

The style which modern tastes demand from the Barrister in his intercourse with the Judges is almost entirely an artificial style, and little dependent on natural qualities. A full vocabulary, and a perfect mastery and command over facts, are as essential to success in this department of forensic speaking, as they are in the style we have been just considering. The boundaries between the legislative and the judicial powers are no longer ill marked out or badly guarded. Our law makers are employed in their proper province, of establishing from the contemplation of a whole class of cases, a general rule for deciding on every future case that may be referrible to that class. Our Judges are only occupied in ascertaining to what previously established legal class the particular case before them belongs, and what the decision of the law is regarding that class. There is here scope indeed, for neat and fluent expression—for familiarity with precedents—for skilful dealing with details—for clear and vigorous reasoning—and for the views of a mind capable of comprehensive generalization. There is room for the useful forms of eloquence, but that is all. Ornament seems strangely out of place nowadays in a

legal argument ; and I fear “ the veriest dolt that ever stammered a sentence would be more attended to with a case in point, than Cicero with all his eloquence if unsupported by authorities.”* But though this saying of Maddock is to a great extent true, the advocate who can cite his authorities without stammering, or who can express himself fluently without flippancy, and clearly without undue compression ; who can weave his facts into his argument, and drive that argument home without wearying by repetition, will command an attention from the Bench which will never be accorded to his less cultivated brother. I know of only two ways by which both these styles may be acquired : extensive reading and constant practice. I do not at all undervalue the use and importance of written composition as a means of acquiring facility of speaking. From my own experience I would say that it could not be recommended too highly. But the means which are adopted by some may not be suitable to others, and we know that some of the greatest orators were never accustomed to write. But no one ever spoke well yet who had not acquired a command over his language by much and varied reading. Words, and happy phrases, and choice turns of expression, are the materials he works with, and he requires these at his hand at every moment. The Nisi Prius orator must seek them among the treasures of his nation’s poets, through the pages of her philosophers and historians, in the genial gossipings of her essayists, and in the teachings of her

* Maddock’s Chancery Practice.—Preface.

divines. He must hew out from her old dramatists the—

“ancient words,
That come from the poetic quarry as sharp
As swords,”

and be familiar with the newest coinage of the most modern novelist. The Barrister who would aspire to a good legal style must seek his materials through Reports and Text Books, amid the cramped phraseology of conveyancers, and through the tangled mazes framed by cunning pleaders. In school and in college, in the law class, and in the private studies which the tastes of each of us may dictate, we are collecting these materials ; but it is only constant and early practice that will teach us how to use them. The aspirant to the Irish Bar cannot say he is without the means for such practice. The Law Students' Debating Society, in whose success some of us feel an especial pride, gives him these means in his student days, and after his call he may find them in this Society. Another school has been opened amongst us, whose rapid progress and great success during the past two years deserves some notice here. I mean the “Once a Week Club.” This Society is composed, as you know, of members of the Bar. It is formed after the model of some of the Debating Societies with which your London experiences have made you familiar ; and in the language of its rules, it seeks to combine the study of speaking with social ease. I regret that a feeling should have grown up that this new Society and ours should hold antagonistic positions. It would not be true to say that the greater attractions it offers, the

zeal and ability of its founders, and the brilliancy and success of its debates, have had no injurious effect upon our last Session. But the two Societies are not antagonistic—there is ample room for both—and there should be no feeling between them but one of honorable rivalry in carrying out the aim each has in view, the fitting of its members for the practice of our common profession. And yet I do not hesitate to say that our Society gives opportunities for improvement which the “Once a Week Club” does not pretend to offer. They cultivate only what I have spoken of to-night as the Jury style. Legal Debates form no element in their programme ; and so their members have no means of practising themselves in the style suitable for the Court. Now this is the very style which is the most important to the Barrister just entered on his profession. It is but seldom in the early years of his career he will get a chance of addressing a jury. Such a chance may, of course, come to him, and by successfully availing himself of it, he may at once open the avenues to fortune. But from the first beginnings of business he will want the other style daily. He will be called upon to argue a demurrer or contest a motion single-handed, long before the lucky absence of his senior may bring him the chance I have spoken of. On the most ordinary motion of course, he will be expected to deal with facts under their legal aspect, and to express his thoughts, and to support his application in appropriate legal language. Some there are who gain the facility of doing all this by constant practice in Court. But this is a dangerous course to adopt,

and one that only can be hazarded with impunity by men who either possess great ability or great connections. We read in the Life of Curran that to gain a fluency in dealing with legal topics, he was in the habit of extracting a case from his books, or proposing to himself some original question of law, and then debating it alone with the same anxious attention to argument and diction as if he were discussing it in open Court.* Our Society adopts exactly the same means to gain the same end, with the additional advantage that the discussion is done in public, and the subject is tossed to and fro between many minds. We all know the advantage of seeing how our thoughts look when they are turned into words, and what a clearer view we get of a subject when we have to explain it to others. "Reading," says Coke, "without hearing is dark and irksome, hearing without reading is slippery and uncertain,—neither of them yield seasonable fruit without conference."

I have now put before you our past history and our present position. I have sketched, I know with an uncertain hand, the changes which have taken place in the art which it is our special object to acquire. I have told you what seem to me to be the forms of that art which the Barrister of our day should aim at ; and I have advocated the claims of our Society as a place wherein that art may be most fitly learned. I have carefully looked through your Society's rules, and I have thought over the possible changes which might be made in them. I confess I cannot suggest

* Life of Curran by his Son, Vol. i. p. 84.

any. I would be sorry to see any alteration made in the present proportion of legal to general subjects. I think the study of law, and that practical knowledge which a constant handling of legal subjects can alone give, should be our chief object. Our Society must depend for success, not on rules or on their exact enforcement, but on the zeal, activity, and public spirit of its members. To that I appeal. I ask the old members who have proved its value, to rally round it now when it stands in need of help. I tell the gentlemen who have recently joined the ranks of our profession, or who shortly hope to be enrolled amongst them, that nowhere will they find better opportunities of fitting themselves for the work to which they have chosen to devote their lives. And so I trust that some future President, at the close of another cycle of twenty years, will look back over the past of the Legal and Historical Society as I have done to-night. And as he tells of the dangers which beset it in the year 1867, and tells how its old friends came to its rescue, and brought new ones to their aid—I trust he will be able to reckon up as many fair results of its working as it was my good fortune to do. To me it would be always a source of great pride, if I could feel that my words had not been wholly without their effect at the turning point of our Society's fortunes.

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